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14 CLAIMTEK, LLC, dba CLAIMTEK SYSTEMS

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CLAIMTEK, LLC, a California limited liability company, doing business as CLAIMTEK SYSTEMS,

Plaintiff,

v.

MED OFFICE GROUP INC., a Colorado corporation; JOHN WARREN, an Individual; and DOES 1 through 10, Inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES & INJUNCTIVE RELIEF

1. Breach of Contract
2. Trademark Infringement Under 15 U.S.C. §1114
3. False Designation of Origin & Unfair Competition Under § 15 U.S.C. § 1125(a)
4. Accounting

DEMAND FOR JURY TRIAL

Plaintiff CLAIMTEK, LLC, a California limited liability company, doing business as CLAIMTEK SYSTEMS (“ClaimTek”) files this Complaint and complains and alleges as follows against Defendants MED OFFICE GROUP INC., a Colorado corporation (“MOG”) and JOHN WARREN, an individual (“WARREN”). MOG and WARREN are sometimes collectively referred to as “Defendants.”

1 **NATURE OF CLAIMS**

2 1. ClaimTek is the developer and owner of a medical office billing
3 program called the “ClaimTek Systems Billing Center Program” (the “Program”).

4 2. The Program is identified by, and marketed and sold under, the
5 trademark “MEDOFFICE.”

6 3. ClaimTek owns all right, title and interest in and to the “MEDOFFICE”
7 trademark. The MEDOFFICE trademark is protected by United States Trademark
8 Registration No. 4,435,991 owned by ClaimTek.

9 4. On or about February 28, 2021, MOG entered into a written agreement
10 with ClaimTek (the “Agreement”) by which MOG acquired a non-exclusive license
11 to use the Program.

12 5. The Agreement expressly provides that ClaimTek’s trademarks “shall
13 not be used in Licensee's company name.” Nevertheless, MOG has used and
14 continues to use ClaimTek’s MEDOFFICE trademark in its company name, thereby
15 breaching the Agreement and infringing ClaimTek’s MEDOFFICE trademark.

16 6. ClaimTek brings this action to secure damages and equitable relief
17 against Defendants for breach of the Agreement, trademark infringement, and
18 violation of Section 43(a) of the Lanham Act.

19 **JURISDICTION AND VENUE**

20 7. This Court has original subject matter jurisdiction over this action and
21 the claims asserted herein pursuant to 28 U.S.C. § 1331 (federal question
22 jurisdiction) and § 1338(a)-(b) (patent, copyright, trademark and unfair competition
23 jurisdiction) because this action arises under the federal Trademark Act, 15 U.S.C. §
24 1051.

25 8. This Court has subject matter jurisdiction over Plaintiff’s breach of
26 contract claim under state law pursuant to 28 U.S.C. § 1338(b) and § 1367
27 (“supplemental jurisdiction”) because such claim is so related to the federal law
28 claims in this action that they form a part of the same case or controversy under

1 Article III of the United States Constitution.

2 9. Venue is proper in this judicial district pursuant to 28 U.S.C. §
3 1391(b)(2) because a substantial part of the events or omissions giving rise to the
4 claim occurred in this judicial district. The Agreement also has a forum selection
5 clause that provides that “that the forum and place of any dispute and resolution of
6 any dispute, relating to or arising out of this contract, shall be in the State of
7 California.”

8 **THE PARTIES**

9 10. Plaintiff CLAIMTEK, LLC doing business as CLAIMTEK SYSTEMS
10 (“ClaimTek”), is a limited liability company organized and existing under the laws
11 of the State of California with its principal place of business in Irvine, California.

12 11. ClaimTek is a software developer and licensor of medical and dental
13 billing software since at least as early as 1996.

14 12. ClaimTek has developed and offers for license a professional suite of
15 modern software applications providing dynamic billing and practice management
16 resources for medical offices.

17 13. ClaimTek is informed and believes and thereon alleges that defendant
18 MED OFFICE GROUP INC. (“MOG”) is a Colorado corporation with its principal
19 place of business in Manitou Springs, Colorado.

20 14. ClaimTek is informed and believes and thereon alleges that defendant
21 JOHN WARREN (“WARREN”) is an individual residing in the State of Colorado.

22 15. ClaimTek is informed and believes and thereon alleges that WARREN
23 is a principal of MOG, is responsible for, and/or participated in, authorized,
24 directed, controlled, induced, and/or benefitted from, the wrongful acts alleged
25 herein and therefore is liable for such acts.

26 16. ClaimTek is unaware of the true names and capacities of the defendants
27 sued herein as DOES 1 through 10, inclusive. Therefore, ClaimTek sues said
28 defendants by such fictitious names. ClaimTek is informed and believes and

1 thereon alleges that DOES 1 through 10, and each of them, are in some way
2 associated with Defendants and/or responsible for the wrongdoing alleged herein,
3 and ClaimTek prays that their true names and capacities, when ascertained, may be
4 incorporated by appropriate amendment.

5 17. ClaimTek is informed and believes and thereon alleges that at all times
6 herein mentioned, each and every defendant was the agent, servant, employee, joint
7 venturer, partner, subsidiary, and/or co-conspirator of each other defendant, and
8 that, in performing or failing to perform the acts herein alleged, each was acting
9 individually as well as through and in the foregoing alleged capacity and within the
10 course and scope of such agency, employment, joint venture, partnership, subsidiary
11 and/or conspiracy, and each other defendant ratified and affirmed the acts and
12 omissions of the other defendants. ClaimTek is further informed and believes that
13 each defendant, in taking the actions alleged herein and/or ratifying the actions
14 alleged herein, acted within the course and scope of such authority and, at the same
15 time, for their own financial and individual advantage, as well as in the course and
16 scope of such employment, agency and as an alter ego therein.

17 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

18 A. The MEDOFFICE® Trademark

19 18. Since at least as early as 1996, ClaimTek has developed and has offered
20 for license a suite of software applications providing dynamic billing and practice
21 management resources for medical practices.

22 19. ClaimTek's software applications are identified by and offered for sale
23 and sold under ClaimTek's MEDOFFICE trademark.

24 20. ClaimTek has built a prominent reputation within the medical
25 community through its MEDOFFICE branded billing software.

26 21. As a result of ClaimTek's extensive advertisement, promotion, and use,
27 of its MEDOFFICE trademark, such trademark has developed enormously valuable
28 goodwill and is an extremely valuable asset owned by ClaimTek.

1 22. ClaimTek is the owner of United States Trademark Registration No.
2 4,435,991 (the “MEDOFFICE® Registration”) for the MEDOFFICE® trademark
3 for “business software, namely, billing and practice management software for use in
4 the medical field” in International Class 9.

5 23. The MEDOFFICE® Registration was issued on November 19, 2013,
6 and has been renewed accordingly.

7 24. The MEDOFFICE® Registration is incontestable and therefore
8 constitutes conclusive evidence of ClaimTek’s ownership of and exclusive rights in
9 and to the MEDOFFICE® mark.

10 B. The Agreement

11 25. On or about February 28, 2021, ClaimTek entered into a written
12 contract with MOG entitled the “ClaimTek Systems Contract, Licensing, Training &
13 Support Agreement” (the “Agreement”).

14 26. A true and correct copy of the Agreement is attached hereto to as
15 Exhibit “1” and incorporated herein as though fully set forth.

16 27. By the Agreement, MOG purchased licenses for five individuals for the
17 MEDOFFICE® software including a full package of the software, training, practice
18 management, printed materials, online support, and other items.

19 28. The Agreement grants permission to MOG to use ClaimTek’s
20 trademarks ‘MEDOFFICE®’ and ‘DentOffice®,’ along with the MEDOFFICE®
21 and DentOffice® logos, on MOG’s marketing materials.

22 29. The Agreement specifically provides that MOG could only use
23 ClaimTek’s trademarks in the following forms: ‘MEDOFFICE® Provider’
24 ‘DentOffice® Provider,’ and/or ‘ClaimTek Affiliate.’

25 30. The Agreement expressly provides that ClaimTek’s trademarks “shall
26 not be used in Licensee’s company name.”

27 31. The Agreement also expressly provides that “Licensee acknowledges
28 and agrees that all ownership rights and title to the CLAIMTEK SYSTEMS, related

1 copyrights, or trademarks shall remain with CLAIMTEK SYSTEMS and licensee
2 shall not use CLAIMTEK SYSTEMS Trade names or logo for any purpose other
3 than what has been described in . . . this agreement.”

4 32. MOG has been and is doing business as “Med Office Group, Inc.” at all
5 relevant times and therefore has used and continues to use ClaimTek’s
6 MEDOFFICE® trademark in its company name in direct violation and breach of the
7 Agreement.

8 33. On or about April 26, 2022, ClaimTek demanded that MOG cease and
9 desist the unauthorized use of ClaimTek’s MEDOFFICE® trademark as part of
10 MOG’s corporate name.

11 34. To date, MOG has failed and refused to stop using ClaimTek’s
12 MEDOFFICE® trademark as part of MOG’s corporate name.

13 **FIRST CLAIM FOR RELIEF**

14 **(Breach of Contract)**

15 **(Against MOG)**

16 35. ClaimTek realleges each and every allegation set forth in Paragraphs 1
17 through 34, inclusive, and incorporates them by reference herein.

18 36. As alleged herein, ClaimTek and MOG entered into the Agreement on
19 or about February 28, 2021.

20 37. ClaimTek has done all, or substantially all, of the material things that
21 the Agreement required it to do, or it is excused from doing those things. All
22 conditions required by the Agreement for MOG’s performance occurred.

23 38. MOG breached the Agreement by doing business under the name Med
24 Office Group, Inc. and thereby using ClaimTek’s MEDOFFICE® trademark in its
25 company name.

26 39. Despite ClaimTek’s demand that it cease and desist from doing so,
27 MOG continues to do business under the Med Office Group, Inc. name and
28 continues to breach the Agreement by using ClaimTek’s MEDOFFICE® trademark

1 in its company name.

2 40. As a direct and proximate result of MOG's breach of the Agreement,
3 ClaimTek's trademark rights and prominent reputation in the medical community
4 have been damaged.

5 41. ClaimTek has been and will continue to suffer lost revenues and other
6 economic and general damages, the exact amount of which has not been ascertained,
7 but will be according to proof.

8 42. ClaimTek is entitled to an award of its attorneys' fees and costs
9 pursuant to Paragraph 43 of the Agreement.

10 **SECOND CLAIM FOR RELIEF**

11 **(Infringement of Federally Registered Mark Under 15 U.S.C. §1114)**

12 **(Against All Defendants)**

13 43. ClaimTek realleges each and every allegation set forth in Paragraphs 1
14 through 42, inclusive, and incorporates them by reference herein.

15 44. As alleged herein, Defendants have used, and continue to use, the
16 MEDOFFICE® trademark in commerce in violation of the restrictions in the
17 Agreement and in a manner not approved by ClaimTek.

18 45. Defendants' actions as alleged herein constitute infringement of
19 ClaimTek's federally-registered MEDOFFICE® trademark and violate Section 32
20 of the Lanham Act, 15 U.S.C. § 1114.

21 46. The actions of Defendants as alleged herein have at all relevant times
22 been willful.

23 47. ClaimTek is informed and believes and thereon alleges that
24 Defendants, and each of them, will continue to infringe Plaintiff's MEDOFFICE®
25 trademark unless enjoined from doing so.

26 48. ClaimTek has been, and continues to be, irreparably injured as a result
27 of the infringing activities of Defendants, and each of them, as alleged herein and
28 has no adequate remedy at law.

1 49. ClaimTek is entitled to temporary, preliminary, and permanent
2 injunctive relief against further infringing conduct by Defendants.

3 50. Defendants' actions have injured and damaged ClaimTek in an amount
4 to be proven at trial. Defendants have illegally profited from their infringement of
5 ClaimTek's MEDOFFICE® trademark in an amount to be proven at trial.

6 51. ClaimTek is entitled to an award of its attorneys' fees and costs, and
7 treble its actual damages, pursuant to 15 U.S.C. § 1125.

8 **THIRD CLAIM FOR RELIEF**

9 **(False Designation of Origin and Unfair Competition Under § 43(a) of the**
10 **Lanham Act, 15 U.S.C. § 1125(a))**

11 **(Against All Defendants)**

12 52. ClaimTek realleges each and every allegation set forth in Paragraphs 1
13 through 51, inclusive, and incorporates them by reference herein.

14 53. The conduct of Defendants, and each of them, as alleged herein,
15 constitutes false designation of origin, unfair competition, and/or false advertising,
16 in violation of Lanham Act § 43(a), 15 U.S.C. § 1125(a).

17 54. The actions of Defendants as alleged herein have at all relevant times
18 been willful.

19 55. ClaimTek is informed and believes and thereon alleges that
20 Defendants, and each of them, will continue to Lanham Act Section 43(a) unless
21 enjoined from doing so.

22 56. ClaimTek has been, and continues to be, irreparably injured as a result
23 of the wrongful actions of Defendants, and each of them, as alleged herein and has
24 no adequate remedy at law.

25 57. ClaimTek is entitled to temporary, preliminary, and permanent
26 injunction relief against further infringing conduct by Defendants, and each of them.

27 58. Defendants' actions have injured and damaged ClaimTek in an amount
28 to be determined at trial.

1 59. Defendants have illegally profited from their Lanham Act Section 43(a)
2 in an amount to be proven at trial.

3 60. ClaimTek is entitled to an award of its attorneys' fees and costs, and
4 treble its actual damages, pursuant to 15 U.S.C. § 1125.

5 **FOURTH CLAIM FOR RELIEF**

6 **(Accounting Against All Defendants)**

7 61. ClaimTek realleges each and every allegation set forth in Paragraphs 1
8 through 60, inclusive, and incorporates them by reference herein.

9 62. As alleged herein, ClaimTek has an interest in and a right to recover all
10 profits generated by Defendants from the wrongful exploitation of the
11 MEDOFFICE® trademark.

12 63. ClaimTek is informed and believes and thereon alleges that Defendants
13 have generated an undetermined yet substantial amount of money and profit by
14 virtue of their unlawful use of the MEDOFFICE® trademark.

15 64. The amount of money and profit due from Defendants is unknown to
16 ClaimTek and cannot be ascertained without an accounting of all of Defendants'
17 financial records related to the use of the MEDOFFICE trademark and their
18 infringing and unlawful activities.

19 65. Accordingly, ClaimTek is entitled to and hereby requests an
20 accounting.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, ClaimTek requests judgment against Defendants, and each of
23 them, as follows:

24 A. That the Court render a final judgment in favor of ClaimTek and
25 against Defendants, and each of them, on all claims for relief alleged herein;

26 B. That Defendants' actions be deemed willful;

27 C. That the Court render a final judgment declaring that Defendants, and
28 each of them, have willfully violated 15 U.S.C. § 1114 by infringing ClaimTek's

1 rights in the MEDOFFICE® trademark;

2 D. That the Court enter a final judgment declaring that Defendants, and
3 each of them, have willfully violated the provisions of 15 U.S.C. § 1125(a);

4 E. That Defendants, their agents, servants, employees, attorneys,
5 successors, and assigns, including the officers and principals of each Defendant, and
6 all other persons in active concert or participation with any of them who receive
7 actual notice of the injunction by personal service or otherwise, be temporarily,
8 preliminarily, and permanently enjoined from:

- 9 1. using the Med Office Group, Inc. name, the MEDOFFICE®
10 trademark, and/or any other name, term, logo, or phrase that is
11 confusingly similar to the MEDOFFICE® trademark, to market,
12 advertise, promote, distribute, sell, offer for sale, and/or identify
13 Defendants' goods and/or services;
14 2. otherwise infringing the MEDOFFICE® trademark;
15 3. engaging in conduct that violates Lanham Act Section 43(a), 15
16 U.S.C. § 1125(a);

17 F. That Defendants be directed to file with this Court and serve on
18 ClaimTek within thirty (30) days after the service of the injunction, a report, in
19 writing and under oath, setting forth the manner and form in which Defendants have
20 complied with the injunction pursuant to 15 U.S.C. § 1116;

21 G. That Defendants be required to deliver and destroy within thirty (30)
22 days all devices, literature, advertising, packaging, goods and other materials
23 bearing the Med Office Group, Inc. name pursuant to 15 U.S.C. § 1118;

24 H. That Defendants be required to account to ClaimTek for any and all
25 profits derived by Defendants and all damages sustained by ClaimTek by virtue of
26 Defendants' acts complained of herein;

27 I. That Defendants be ordered to pay to ClaimTek all damages sustained
28 as a consequence of the acts complained of herein, subject to proof at trial;

1 J. That ClaimTek be awarded damages including disgorgement of
2 Defendants' profits due to its infringement pursuant to 15 U.S.C. § 1117, together
3 with prejudgment and post-judgment interest;

4 K. In the alternative, that Defendants be ordered to pay to ClaimTek
5 statutory damages in an amount according to proof at trial, based on the willful
6 infringement of the MEDOFFICE® trademark;

7 L. That this case be deemed exceptional and that the amount of the
8 damages be trebled and that the amount of profits be increased by as many times as
9 the Court deems appropriate;

10 M. That the Defendants be required to pay the ClaimTek's costs, expenses,
11 and reasonable attorney fees in connection with this action; and

12 N. For such other and further relief as this Court may deem just and
13 proper.

14
15 Dated: September 15, 2022

GOODMAN MOONEY, LLP

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17 By: *Eric Goodman*
18 Eric J. Goodman, Esq.
19 Attorneys for Plaintiff
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1 **DEMAND FOR JURY TRIAL**

2 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, ClaimTek
3 demands a trial by jury on all issues raised by the Complaint that are triable by jury.
4

5 Dated: September 15, 2022

GOODMAN MOONEY, LLP

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7 By: *Eric Goodman*
8 Eric J. Goodman, Esq.
9 Attorneys for Plaintiff
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